UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JUN 0 5 2018

CERTIFIED MAIL NO. 7015 0640 0001 1121 8113
RETURN RECEIPT REQUESTED

Brian George, President
Sinister Mfg. Company, Inc., d/b/a Sinister Diesel, Sinister Mustang, and MKM Customs
2025 Opportunity Drive, Suite 7
Roseville, California 95678

Re: Notice of Violations of the Clean Air Act

Mr. George:

The United States Environmental Protection Agency ("EPA") has investigated and continues to investigate Sinister Mfg. Company, Inc., d/b/a Sinister Diesel, Sinister Mustang, and MKM Customs ("Sinister Diesel" or the "Company") for compliance with the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As summarized in this Notice of Violation, the EPA has determined that Sinister Diesel manufactured and/or sold parts or components for motor vehicles or motor vehicle engines that bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engines in compliance with the CAA regulations, and knew or should have known that these parts or components were offered for sale or installed for such use or put to such use. Therefore, Sinister Diesel has violated section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

This Notice of Violation arises under Part A of Title II of the Act, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources of air pollution. In creating the Act, Congress found, in part, that "the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare."[1] Congress' purpose in creating the Act, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution."[2]

[1] CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).
[2] CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).

The EPA's allegations here concern parts or components for motor vehicles and engines subject to the CAA emission standards.[3] The Act requires the EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare.[4] As required by the Act, the emission standards "reflect the greatest degree of emission reduction achievable through the application of [available] technology."[5] Motor vehicles and engines are subject to specific emission standards for each pollutant, based on a vehicle's or engine's class and model year.[6]

In addition, the Act makes it a violation "for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use."[7] It is also a violation to cause any of the foregoing acts.[8]

Vehicle and engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine."[9] For example, manufacturers employ retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen ("NOx"). Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include diesel particulate filters ("DPFs"), exhaust gas recirculation ("EGR"), diesel oxidation catalysts ("DOC"), nitrogen oxide absorbing catalysts ("NAC"), and selective catalytic reduction ("SCR"). Modern vehicles and engines are equipped with electronic control modules ("ECMs"). ECMs continuously monitor engine and other operating parameters and control the emission control devices, such as the fueling strategy.

Manufacturers further employ onboard diagnostics, or "OBD," which comprise of systems that monitor components that can affect the emission performance of a motor vehicle, detect problems with the vehicle's emission-related systems that could cause the vehicle to fail to comply with the CAA's emission standards, alert drivers to these problems, and store electronically-generated malfunction information.[10] If a problem is detected prompting any diagnostic trouble code ("DTC"), the OBD system illuminates a warning lamp the malfunction indicator lamp ("MIL"), on the vehicle instrument panel to alert the driver. Given these functions, the OBD is part of a motor vehicle's emission control system.

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[3] *See generally* 40 C.F.R. Part 86, Subpart A (setting emission standards for these categories).
[4] CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B).
[5] CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).
[6] *See, e.g.*, heavy-duty diesel engine emission standards at 40 C.F.R. §§ 86.004-11, 86.007-11, 86.099-11 and light-duty vehicle emission standards at 40 C.F.R. § 86.1811-04. *See also* 40 C.F.R. §§ 86.090-8 (1990 and later model year light-duty vehicles); 86.094-9 (1994 and later model year light-duty trucks); 86.001-9 (2001 and later model year light-duty trucks); 86.004-9 (2004 and later model year light-duty trucks); 86.091-10 (1991 and later model year Otto-cycle heavy-duty engines and vehicles); 86.008-10 (2008 and later model year Otto-cycle heavy-duty engines and vehicles).
[7] CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).
[8] CAA § 203(a), 42 U.S.C. § 7522(a).
[9] 40 C.F.R. § 86.094-2.
[10] *See* CAA § 202(m), 42 U.S.C. § 7521(m), requiring EPA to promulgate regulations requiring OBD systems for motor vehicles after 2007. *See also* 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05, and 86.1806-17.

To ensure that every new motor vehicle or engine legally sold, offered for sale, imported, delivered for introduction into commerce, or introduced into commerce in the United States (collectively, "introduced into commerce") satisfies applicable emission standards, the EPA runs a certification program. Under this program, the EPA issues certificates of conformity ("COCs"), thereby qualifying motor vehicles and engines for introduction into commerce.[11] To obtain a COC, an original equipment manufacturer ("OEM") must submit a COC application to the EPA for each engine family and each model year in which it intends to manufacture or import motor vehicles or engines for introduction into commerce.

The Act makes it a violation "for any person to remove or render inoperative any device or element of design installed [by OEM] on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser."[12] It is also a violation to cause any of the foregoing acts.[13]

Alleged Violations

Based on evidence gathered during an inspection on April 29, 2016, and Sinister Diesel's July 28, 2017 response to EPA's Information Request issued pursuant to Section 208(a) of the CAA on June 30, 2017, the EPA has determined that Sinister Diesel has manufactured, offered for sale, sold, and/or installed from October 30, 2015 to July 17, 2017 products that have a principal effect of altering or bypassing emission control systems or elements of design on motor vehicles or engines, primarily light-duty diesel trucks and engines, manufactured by entities such as FCA US LLC and its predecessors ("FCA"), General Motors Co. ("GM"), and Ford Motor Co. ("Ford"). Sinister Diesel sold three main categories of these "defeat device" products: (1) exhaust emission control delete hardware (sometimes referred to as "straight pipes"); (2) EGR delete hardware; and (3) aftermarket ECM programmers (including hardware commonly referred to as "tuners" and software commonly referred to as "tunes"). Additional categories of violations include the following "defeat device" products: crankcase vents (used to reroute exhaust gases to bypass the exhaust emission control components), grid heater delete kits (render inoperative the heating element found in certified configurations on certain highway vehicles for the purpose of heating exhaust gases to promote catalyst efficiency), and smog pump eliminators. EPA's findings regarding Sinister Diesel's sales transactions involving defeat devices between October 30, 2015 to July 17, 2017 are identified in the table below:

[11] 40 C.F.R. § 86.007-30.

Defeat Device Product	Effect on Motor Vehicle and Engine Emission Control Systems and Elements of Design	Approximate Quantity of Defeat Device Products Sold
1. EGR Delete Hardware	EGR system removal and/or bypass.	35,960
2. Exhaust Emission Control Delete Hardware (i.e., straight pipes)	Remove and bypass DOC, DPF, NAC and/or SCR systems.	1,625
3. Grid Heater Delete	Render inoperative the heating element found in certified configurations on certain highway vehicles for the purpose of heating exhaust gases to promote catalyst efficiency.	236
4. Smog Pump Eliminators	Defeat portions of the aftertreatment system on certain highway gasoline-powered vehicles. The smog pump is designed to inject air into the exhaust stream ahead of the catalytic converters to promote more complete combustion of hydrocarbons in exhaust stream.	8
5. Crankcase Vent Kit	Reroute exhaust directly to the atmosphere there bypassing the exhaust emission control components on certain highway vehicles.	411
6. Tuner related products	Alter fuel timing maps within engine electronic calibrations AND/OR allowing removal of a DOC, DPF, NAC, or SCR system or disabling of an EGR system without illuminating a malfunction indicator lamp ("MIL"), prompting any diagnostic trouble code ("DTC"), or causing any engine derating AND/OR Disable EGR system and OBD oxygen sensors.	1,963
	TOTAL	**40,203**

On the basis of Sinister Diesel's status as a custom tune designer, the functions of Sinister Diesel's products, Sinister Diesel's advertisements and disclaimers regarding the products, and EPA's findings during its inspection of Sinister Diesel's facility, EPA has determined that Sinister Diesel knew or should have known that these products were offered for sale, sold, or installed to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants.

Sinister Diesel manufactured and sold EGR delete hardware designed to replace the EGR valve and cooler systems found on most model year 2003 and newer diesel engines. This hardware typically includes EGR block off plates and/or intake or exhaust manifolds that do not include an EGR port. Sinister Diesel also sold exhaust delete hardware. The exhaust delete hardware are exhaust systems that do not incorporate exhaust aftertreatment emission control devices and are designed to replace exhaust systems containing DOCs, DPFs, NACs, and SCRs.

In addition, Sinister Diesel sold aftermarket ECM programmers that rendered inoperative the OEM-certified ECM programming and replaced it with modified programming that altered fuel injection maps and other elements of design that can lead to significant emission increases compared to the OEM-certified programming. The aftermarket ECM programmers sold by Sinister Diesel also defeat the OEM-certified ECM programming by overriding the OBD notifications required by regulation under the CAA, and enable the removal of emission control systems or elements of design without illuminating a MIL, prompting a DTC, or causing an engine power reduction due to a missing or malfunctioning element of design.

Sinister Diesel's advertising on its website, https://sinisterdiesel.com, prominently claims that many of its products facilitate modification of a diesel truck's stock configuration. For example, the product "Sinister Diesel EGR Delete Kit for Dodge Cummins 2007.5-2009 6.7L" is described in the following manner:

> "This Sinister Diesel 6.7 Cummins EGR Delete Kit for the 2007.5-2009 Dodge Ram 2500 & 3500 replaces the factory-installed EGR (exhaust gas recirculation) system on your Cummins engine, giving you lower engine temperatures, faster turbo spool, and more power to the wheels."[14]

Statements that Sinister made regarding the functions for their products, Sinister's advertisements regarding the merchandise, and their response to EPA's information request support the finding that Sinister Diesel knew or should have known its sale of defeat devices defeat, bypass or render inoperative emission control systems of motor vehicles and engines.

Furthermore, Sinister Diesel knew or should have known that these defeat device products were offered for sale on "motor vehicles" or "motor vehicle engines" despite any disclaimers. Evidence observed on Sinister Diesel's Facebook page post from May 25th shows installation of Sinister Diesel products on motor vehicles: "Go watch Truck Master's new video on installing Sinister Diesel's 4 inch Exhaust Kit here: http://ow.ly/EhbC30k9i1r ." Shown through their language used in the advertisement of these merchandise, their defeat device products sold or offered for sale were designed and marketed for use on specific makes and models of FCA, GM, or Ford motor vehicles or engines.[15] FCA, GM, or Ford sought and obtained COCs from the EPA for these motor vehicles or engines for highway use. This certification

[14] Website visited on 5/10/18: https://sinisterdiesel.com/i-15883456-sinister-diesel-egr-delete-kit-for-dodge-cummins-2007-5-2009-6-7l.html

[15] Cummins engines were used in Dodge brand motor vehicles manufactured by FCA.

unequivocally demonstrates that these vehicles and engines are "motor vehicles" and "motor vehicle engines" under the Act.

Enforcement

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court.[16] Persons violating Section 203(a)(3) (B) of the Act, 42 U.S.C. §§ 7522(a)(3) (B), are subject to an injunction under Section 204 of the Act, 42 U.S.C. § 7523, and a civil penalty of up to $4,619 for each violation.[17]

The EPA is available to discuss this matter with you in further detail upon your request. Please contact David Kim, the EPA attorney assigned to this matter, within 14 days of receipt of this Notice of Violation. Mr. Kim can be reached at 415-972-3882 or Kim.David@epa.gov.

Sincerely,

[redacted]

Kathleen H. Johnson, Director
Enforcement Division

[16] CAA §§ 204, 205, 42 U.S.C. §§ 7523, 7524.
[17] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4; Memorandum from Susan Parker Bodine, U.S. EPA, Assistant Administrator, to Regional Administrators, Amendments to the EPA's Civil Monetary Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule (Jan. 11, 2018).